IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8286 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAVDA JAGMALBHAI MALABHAI

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for MR DC DAVE for Petitioners

Ms.KATHA GAJJAR, A.G.P. for Respondent No. 1

MR HARIN P RAVAL for Respondent No. 2

MR ND NANAVATI for NANAVATY ADVOCATES for Respdt. No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 11/12/2000

C.A.V. JUDGEMENT

1. The prayer of the petitioners in this writ petition is firstly to issue a writ of mandamus

commanding the State of Gujarat, respondent No.1, to annul the impugned notification (Exh.B) dated 20.7.2000 and to restore the position which came into existence on account of Notification dated 21.12.1994 (Exh.A). Further prayer is for a writ of mandamus commanding the respondents No.1 & 2 that in the event of there being any intention to dispose of the said land the same shall be through public auction under the supervision of the Collector, Surendranagar and thereupon no further action shall be undertaken for disposal of the said land in favour of the respondent No.3.

2. Brief facts giving rise to this petition are as under :

The respondent No.2 is a registered co.operative Society registered under the Gujarat Co.Operative Societies Act, 1961 and is engaged in processing raw-cotton with a view to helping its members who are agriculturists engaged in cultivation of cotton. The land bearing Survey No.1753/part, 1754/part, 1773, 1771/part and 1775/1 measuring 25665 sq.mtrs. situated in village Vadhvan, Dist. Surendranagar is exclusively owned by the respondent No.2 society. It was purchased by the society from previous land holders. The land was to be utilised for the purpose of respondent No.2 society and as such right from the beginning the above land was identified for Industrial purpose. The respondent No.1 sanctioned the development plan for the area on or about 4.1.1990 within the municipal limit of Surendranagar Municipality under the Town Planning Act. The land in question was identified for industrial purpose only. It is alleged that the respondent No.3 by making undue use of his influence attempted to purchase 9600 sq.mtrs. land from Survey No.1771 and 1773 at a nominal price of Rs.227.77 ps. per sq.mtrs. Agreement to Sell was executed by the respondent No.2 in favour of the respondent No.3 on 2.9.1988. The respondent No.1 having come to know of the illegalities and irregularities in the proceeding relating to Agreement to Sell in favour of the respondent No.3, directed inquiry into the matter. The Collector made inquiry. The Collector, submitted report to the Government in January, 1991 in which it was conveyed that the said Agreement to sell should not be permitted to go ahead. It is alleged that the respondent No.3 intends to use the land for the purpose other than industrial purpose. Subsequently the development plan was modified and the land in question was permitted to be used for residential purpose and was kept in residential zone and a notification was issued on 21.12.1994 vide Exh.A. According to this modified notification the said land could stand designated for residential zone and the

disposal of the said land, if at all required, shall be by way of public auction only and such public auction shall be undertaken by the Official Liquidator of the respondent No.2 through the Collector, Surendranagar. It may be mentioned at this stage that the respondent No.2 society undergone liquidation proceeding hence the Official Liquidator was appointed. Thus, according to the notification of 21.12.1994 the land could be disposed of only by public auction undertaken by Official Liquidator through Collector, Surendranagar. Petitioners alleged that this was not done and disposal of land was not made under the supervision of the Collector. It is further alleged that the respondent No.3 in collusion with respondent No.2 culminated in another notification dated 20.7.2000 issued by the State Government through Urban Development and Urban Housing Department vide Exh.B in which condition of public auction under the supervision of official Liquidator, through Collector, Surendranagar, was deleted and this notification was styled as Corrigendum to the notification dated 21.12.1994. It is this notification which is under challenge.

3. Notification has been challenged on four counts -

(i) that Exh.B has been issued in flagrant breach of the provisions of Section 19 of the Gujarat Town Planning Act;

(ii) that such notification could not be styled as Corrigendum because no mistake or error in the earlier notification of 21.12.1994 has been pointed out.

(iii) that the deletion of condition for disposal of land from the original notification Exh.A is malafide exercise of powers with a view to confer benefit on respondent No.3 who is in collusion with respondent No.2;

(iv) that the land was agreed to be sold to the respondent No.3 at a throw-away price of Rs.227.77 ps. per sq.mtrs. whereas the petitioners are ready to offer Rs.1,000/- per sq.mtrs. for purchasing the land in question.

4. The stand of the respondent No.1 in the counter Affidavit is that the notification Exh.B is perfectly in accordance with law and it is not invalid nor it was issued in collusion nor it is malafide action.

5. The respondent No.3 has taken stand that since part of the price was paid in persuance of Agreement to Sell and since possession was delivered to this

respondent who raised valuable construction over the same it would be unjust on this belated action of the petitioner to quash the notification Ex.B and to direct restoration of position as it stood in the notification of 21.12.1994.

6. All the allegations have been denied by the respondent No.2 in a very lengthy counter Affidavit where several preliminary objections to the maintainibility of the writ petition have been raised and all allegations have been denied that the respondent No.2 wanted to give undue benefit to the respondent No.3 or that the land was agreed to be sold at a throw-away price. On the other hand the action was taken in accordance with rules and after obtaining requisite opinion from the Authorities and the notification under challenge is not liable to be disturbed.

7. Shri D.C.Dave & Shri Y.N.Oza appeared for the petitioners whereas Ms.Katha Gajjar, learned A.G.P. appeared for the respondent No.1, Shri H.P.Raval appeared for the respondent No.2 and Shri N.D.Nanavati appeared for the Respondent

8. Before taking up the question of validity of notification Ex.B objections regarding maintainability of the petition have to be dealt with first.

9. It was contended by Shri Raval as well as by Shri Nanavati that the writ petition is not maintainable because the petitioners have no locus-standi to maintain the petition. Another objection has been that the writ petition is highly belated and on ground of latches the writ petition is liable to be dismissed. The third objection has been that the petitioners have suppressed the material facts and have not disclosed the same in the writ petition hence on account of suppression of material facts and further on account of the fact that the petitioners have not come with clean hands the petition deserves to be dismissed. The last objection has been that the writ of mandamus, on the facts and circumstances of the petition, cannot be issued and if at all writ of certiorari only could be issued inasmuch as if notification Exh.B is found to be illegal it can be quashed by this Court and not that the direction is to be issued to the State Government - the respondent No.1 for annuling the said notification and directing restoration of position which stood under the notification of 21.12.1994.

10. So far as the last objection is concerned it has

merits. The prayer is for a writ of mandamus directing the respondent No.1 to annul the notification Exh.B and further direct this respondent to restore the position which came into existence by virtue of notification dated 21.12.1994 (Exh.A). The second prayer is that a writ of mandamus be issued commanding the respondents No.1 & 2 that in event of intention to dispose of the said land the same shall be through public auction under the supervision of the Collector, Surendranagar, and no further action shall be undertaken for disposal of the said land in favour of the respondent No.3. In my opinion if the notification Ex.B is found to be illegal it can be quashed and not that mandamus is to be issued in favour of the respondent No.1 to annul it and restore the position as it stood under the notification dated 21.12.1994 (Exh.A). If notification Ex.B is cancelled, quashed and set aside by this Court then no further direction is to be issued and action will be taken by the Authorities in accordance with notification Ex.A. Consequently the writ of mandamus cannot be issued as prayed for by the petitioners. The petition was therefore filed with misconceived relief. Likewise the relief that the respondent No.1 along with respondent No.2 be directed to dispose of the said land only through public auction under the supervision of the Collector, Surendranagar is also misconceived. The respondent No.1 has no role to play in disposal of the land owned by the respondent No.2. The respondent No.2 is not a State. Hence no mandamus can be issued against the respondent No.2 or against the respondent No.1.

11. It was also objected that the writ petition is liable to be dismissed on ground of delay and latches. If this writ petition is considered to be a simple writ petition for quashing the notification Ex.B issued on 20.7.2000 it cannot be said that the writ petition is belated. The petition was filed on 20.7.2000. As such apparently the contention of delay in filing the writ petition cannot be accepted. However, if the allegations made in the writ petition are considered so also Relief (B) it appears that the main grievance of the petitioners is that the Agreement to Sell entered into between the respondent No.2 & 3 was in violation of the notification Exh.A, hence further action should not be taken in persuance of the said Agreement. Thus, in effect the Agreement to sell is proposed to be challenged in this petition. If this is so then the Agreement to sell was entered into on 2.9.1988. It is not a case where the petitioners and more particularly petitioners No.2 & 3 were not in knowledge of the Agreement to sell. They are members of the co.operative society, the respondent No.2.

In these circumstances when they had all the information about various proceedings taken in the meeting of the society and all the resolutions passed by the society they should not have waited for a period of about 13 years. This delay is certainly fatal. If the pith and substance of the relief is examined with reference to the allegations made in the body of the writ petition it can safely be said that in effect the petitioners are challenging the Agreement to sell dated 2.9.1988, in the year 2000. Such delay has not been explained. Consequently the petition deserves rejection on the ground of latches.

12. The other objection has been that the petitioners have no locus to file this petition. It was argued by Shri N.D.Nanavati as well as by Shri Raval that the petitioner No.1 is not a member of the Co.Operative Society whereas the petitioners Nos.2 & 3 are the members of the Co.Operative Society. A stranger to the co.operative society, according to them, has no right to challenge the decision of the co.operative society regarding disposal of the land of the society. Likewise it was contended that the petitioners No.2 & 3 are members of the co.operative society and they being its members could have challenged the action of the co.operative society including the Agreement to sell by approaching the Authorities under Sec. 96 of the Co.Operative Societies Act and not by way of writ petition. Shri Nanavati further contended that it is not a case of Public Interest Litigation nor the public land is going to be sold at a throw-away price. The land is owned by the respondent No.2 and it was agreed to be sold to the respondent No.3 after observing requisite formalities of the registered society and also formalities provided under the Act. Consequently it was argued that there being no lis between the parties regarding the land in question the petitioners have no locus to file this writ petition. I find substance in this objection too. The petitioner No.1, being out-sider, cannot challenge the Agreement to Sell in this writ petition. It is not a public land or the land owned by the Government which is going to be sold in violation of the Rules. Consequently the petitioner No.1 cannot file any writ petition challenging the notification Ex.B. The petitioners Nos.2 & 3 were members of the society and they are still members of the society. Resolutions were passed in the meeting of the society as is disclosed in the counter Affidavit of the respondent No.2. Resolutions of 30.4.1987, 20.6.1987, 23.7.1987 and 10.12.1987 are mentioned in the counter Affidavit. No rejoinder has been filed to this Counter Affidavit.

Consequently it was not a secret transaction about which the petitioners No.2 & 3 were not aware of the Agreement to sell. If they did not decide to challenge various resolutions of the society under the Co.Operative Societies Act nor they decided to challenge the Agreement to Sell in a competent Civil Court they cannot be permitted to challenge the same in this writ petition.

13. The objection that the material facts have been suppressed in the writ petition has also substance. It has not been disclosed in the writ petition that various resolutions which have been passed by the society in this regard were illegal and consequent action of Agreement to Sell is also illegal. If full facts were not brought before the Court it can be said that the petitioners are guilty of suppressing the material facts and this is also a ground for refusing discretionary relief under Article 226 of the Constitution of India.

14. Coming to the merits of the petition the Notification Exh.B is under challenge. The first ground of attack of Shri Y.N.Oza has been that this notification is styled as "Corrigendum", but it is not a Corrigendum inasmuch as there was no printing error in the earlier notification Exh.A. He further contended that the Corrigendum cannot be issued in the manner it has been done and that the State Government has no power to issue such corrigendum. He has also referred to Legal Dictionary on definition of Corrigendum and has argued that the Corrigendum is defined as a Printing or a typographical error detected after publication and corrected seperately on added page. Relying upon this definition he contended that there was no printing or typographical error in earlier notification Exh.A hence there was no ocasion to correct any mistake and as such there was no occasion to correct any mistake, through Exh.B and Exh.B cannot be described as Corrigendum nor it can be accepted as Corrigendum for the aforesaid reasons.

15. Oxford Dictionary, 6th Edition defines Corrigendum to mean a thing to be corrected, especially error in printed book. Shri Nanavati however contended that Corrigendum is not confined only for correction of printing error or typographical error in a notification. According to him if some redundant condition was incorporated in earlier notification it could be deleted by corrigendum and Exh.B has been properly styled as Corrigendum. He further argued that in the earlier notification condition that the variation shall take effect subject to the condition that disposal of the aforesaid land shall be done by the Official Liquidator,

Jalavad Ginning & Pressing Sahakari Mandli through the Collector, Surendranagar by public auction was redundant and it was rightly deleted through Exh.B by the respondent No.1 after obtaining legal opinion.

16. Even if the contention of Shri Oza is accepted that the Corrigendum means a typographical error detected after publication and corrected thereafter by a seperate added page, the Corrigendum cannot be restricted only to clarical, printing or typographical error. Any mistake which has crept in the notification is liable to be corrected by adding material portion or by deleting redundant portion. If some omission was made in the earlier publication it can be rectified through Corrigendum by adding certain words or sentences. Likewise if certain redundant words or sentences were incorporated in the earlier publication the same can be deleted through corrigendum. As such addition or deletion is permissible through Corrigendum. It is not a case where the earlier notification has been modified or varied. Shri Y.N.Oza contended that Corrigendum has been issued in violation of Section 19 of the Gujarat Town Planning & Urban Development Act and since it was not issued in accordance with Section 19 it amounts to flagrant violation of the provisions of Section 19 of the Act hence the Corrigendum becomes illegal and incompetent. This argument cannot be accepted for the simple reason that the earlier notification Exh.A was issued after full compliance of the provisions of the Act, and industrial zone was permitted to be kept in residential zone and this variation was to take effect subject to conditions incorporated in the notification. The question is whether the condition incorporated in the earlier notification was essential and was the requirement of law. In my opinion the said condition was not the requirement of law. The condition reads as under:

> "This variation shall take effect subject to the condition that disposal of the aforesaid land shall be done by the Official Liquidator, Jalavad Ginning & Pressing Sahakari Mandli, through the Collector, Surendranagar by public auction."

It was not a case where the land was owned by the State Government. On the other hand it is undisputed that the land in question was exclusively owned by the co.operative society, the respondent No.2. This society purchased the land from various land holders and became owner thereof. The land was initially kept in the industrial zone. Consequently it could not be used for residential purpose unless the land was placed in

residential zone. For this purpose co.operative society approached for necessary permission and the permission was granted. If the land were placed under residential zone then the owner, namely, the respondent No.2 had authority and right to use it for residential purpose and can also transfer either whole or portion of the land for residential purpose. Of course it could not be transferred or dealt with for industrial purpose. The condition that the land could be disposed of only by public auction by the Official Liquidator, through the Collector, is wholly redundant. No doubt the respondent No.2, on the relevant date was under the Official Liquidator, but there was no obligation on the respondent No.2 to dispose of the land through Official Liquidator through the Collector, Surendranagar. The respondent No.2 could have disposed of the land in any manner it liked. It was not a case where the respondent No.2 wanted to dispose of the land at a throw-away price for personal gain of some of the members of the co.operative society. On the other hand there were heavy dues on the respondent No.2 from the District Co.Operative Bank and in order to pay of the loan and to see that the respondent No.2 became a viable industry that it was decided through various resolutions and after observing formalities under the Act that the land be sold. Malafide has been alleged by the petitioners, but the same could not be substantiated. Mere allegation of malafide is not enough. Allegation that the action has been taken to give undue favour to respondent No.3 by the respondent No.2 is also not substantiated. From Para : 20 of the Counter Affidavit of the respondent No.2 it is clear that representation was made by the respondent No.2 to the Chief Minister and Minister for Co.Operation. The matter was examined by the Legal Department of the State of Gujarat and the Deputy Secretary, Agricultural and Co.Operation Department. The report dated 19.6.2000 was addressed to the Registrar, Co.Operative Society in which opinion was given that the complaint that the land was sold at a lesser price has no substance because enquiry was already conducted and the complaint regarding condition inserted in the notification of 1992 also had no substance and the respondent No.2 was competent to sell its land as there was no justification for insertion of the condition that the land should be sold by public auction by Official Liquidator of the respondent No.2. If after examining the matter, the representation of the respondent No.2 and the opinion of the Legal Department and Deputy Secretary, Agricultural and Co.Operation, the condition was deleted, it cannot be said that the action was beyond the competence of the Government or that the notification Ex.B becomes illegal.

17. On the point of malafide also I do not find any force in the contention. It was not a secret transaction under which the condition was deleted. On the other hand representation was made which was examined by the Legal Department and the Deputy Secretary, Agricultural and Co.Operation Department and then on the opinion of these Authorities that the condition was deleted finding that it was unjustifiably inserted. If there was no justification for introducing the condition it can be said to be redundant condition and redundant condition could be deleted through Corrigendum. It may also be mentioned that by Corrigendum no variation has been made in the original notification Exh.A. If it would have been a case where placing of land in residential zone would have been changed to some other purpose or in industrial zone then it could have been argued that compliance of Section 19 of the Act was necessary. However, since the conversion of land from Industrial Zone to residential zone remains intact and it has not been changed and the public purpose for which the notification Exh.A was issued has also not been disturbed it can hardly be said and accepted that further compliance of Section 19 of the Act was required. As such it cannot be accepted that the notification Exh.B was issued beyond the powers and competence of the State Government or that it is illegal or that it is not a Corrigendum nor it can be said that deletion of condition is malafide.

18. Shri Oza argued that the matter was examined by the Collector and he submitted a report that the entire transaction was malafide and further action may not be permitted. However, that report is not on record. Shri Oza pointed out that adverse inference is to be drawn against the respondent No.1 for not placing on record the said report of the Collector. Obviously the said report can neither be in possession of the petitioner nor in possession of the respondents No.2 & 3. The respondent No.1 may be in possession of such report, but the law of drawing adverse inference is quite clear. Unless a document in possession of other party is summoned and despite order of the Court to produce that document the other party fail to produce the same in court no adverse inference can be drawn. Here no attempt was made at any stage of the writ petition that the said report of the Collector be summoned from the respondent No.1 or the respondent No.1 be directed to file the same. Consequently it is not possible to draw adverse inference against the respondent No.1 for not bringing on record the report of the Collector.

19. The report of the Collector even if placed on record could not have changed the situation. As pointed out earlier it is not a case of malafide action in deleting the condition. Shri Oza however argued that the land was sold at a throw-away price of Rs.227.77 ps. per sq.mtrs. whereas the petitioners are ready to offer price at the rate of Rs.1000/- per sq.mtr. This actually amounts to challenging the disposal of the land in favour of the respondent No.3. It was not a secret transaction. Resolutions were passed in the meeting of the society. Some of the resolutions are mentioned in the Counter Affidavit of the respondent No.2 as Resolution dated 30.4.1987, 20.6.1987, 23.7.1987 and 10.12.1987. It is also mentioned that the intention of sale was made public through public advertisement in a news paper "Prabhat" and thereafter tenders were invited and sealed tenders were opened. Three persons offered to purchase the land at Rs.210/-, Rs. 214/- and Rs.218/- per sq.mtrs. Despite this, attempt was made through negotiation to enhance the price further and through negotiation the price offered by C.K.Sanghvi was raised to Rs.227.77 ps. per sq.mtrs. Shri Oza contended that the news paper "Prabhat" has no circulation. However, it is mentioned in the Counter Affidavit of the respondent No.2 in Para : 11 that all the advertisements of Respondents No.2 were given in news paper "Prabhat" and the petitioners No.2 & 3, being members of the Society, cannot be said to be unaware of this practice. It seems improbable that the petitioners No.2 & 3 being members of the society could not have come to know the intention of the society exhibited in various resolutions and also indicated in public notice published in daily news paper having circulation in the locality. At the relevant time they did not come forward to challenge the action of the respondent No.2 for selling the land at Rs.227.77 ps. per sq.mtrs. This complaint was also subject matter of enquiry and ultimately in the enquiry it was not found that the price at which the land was sold by the respondent No.2 to the respondent No.3 was inadequate, for which Para : 20 of the Counter Affidavit of the respondent No.2 can be referred. It may also be mentioned that the petitioners offer to purchase the land now at the rate of Rs.1000/per sq.mtrs. cannot be accepted. Agreement to sell between the respondents No.2 & 3 was entered into on 2.9.1988. After about 12 years the price of land must have gone high and if current price is offered at Rs.1000/- per sq.mtrs. it can not reflect the real price in September, 1988. The price which was determined in September, 1988 was reasonable and fair price. Even the highest bidder who submitted

tender was asked through negotiation to further raise his offer which was enhanced from Rs.218/- per sq.mtrs. to Rs.227.77 ps. per sq.mtrs. Not only this, figures of land sold and purchased in the nearby area for last three years were collected and on the basis of such information the amount of Rs.124/- per sq.mtrs. was fixed as up-set price and it was decided by the respondent No.2 not to accept any offer below Rs.124/-. In these circumstances no malafide can be attributed to the respondent in accepting the negotiated offer at Rs.227.77 ps. per sq.mtrs. The petitioners could have come forward at that time to offer that they were ready and willing to purchase the land at Rs.1000/- per sq.mtrs. It appears that after noticing the corrigendum issued on 20.7.2000 they have filed this petition on 27.7.2000 just with a view to challenge the action of the respondent No.2 in an indirect manner in this writ petition after a lapse of 12 to 13 years. That action cannot be permitted to be challenged in this manner.

20. Shri Oza further contended that what is contained in Para : 21 of the Counter Affidavit of the respondent No.2 shows high-handed action of the District Registrar, Co.Operative Society. He, through his communication dated 6.3.2000, informed the respondent No.2 that it was competent to have sold the land and the land was rightly sold and the condition stipulated in the notification dated 21.12.1994 was ineffective and redundant. Shri Oza contended that the notification Exh.B was issued on 20.7.2000 and prior to that the District Registrar had issued such communcation which was highly objectionable. I do not find anything objectionable in this correspondence for the obvious reason that because the representations were made and opinion was sought from various authorities, the District Registrar, Co.Operative Societies could have given his opinion.

21. Pendency of Special Civil Application No.5832 of 1997 and Special Civil Application No.3102 of 1994 in this Court has no relevance because in those petitions challenge was to the liquidation proceedings and not to the Agreement to Sell. As such also the action of the respondent No.1 cannot be described as malafide.

22. Before selling the land permission of the Co.Operation Department of the Government was sought and also from the District Registrar, Co.Operative Societies and if District Registrar gave his opinion it cannot be said to be high-handed action or malafide communication.

23. Since the land in question was of the respondent

No.2 and was not a new tenuer hence no permission was required and it could be sold by the respondent No.2 without any condition and also by ignoring the condition contained in Exh.A.

24. The relief of quashing the notification cannot be granted for another reason. Mandamus cannot be issued for the reasons stated in the for-going portion of this judgment. The writ of certiorari quashing Exh.B also cannot be issued because it would cause great hardship to the respondent No.3. This respondent entered into Agreement to Sell as back as on 2.9.1988. Part of the price was paid by this respondent to the respondent No.2 which was paid to the District Co.Operative Bank by the respondent No.2 in part payment of outstanding loan against it. Possession was delivered to the respondent No.3 in persuance of Agreement to Sell, whereafter the respondent No.3 raised constructions and incurred expenditure. If Exh.B is cancelled or quashed and set aside its effect would be that condition in Exh.A shall stand restored and thereafter another exercise has to be undertaken for sale of land by public auction. This exercise after 13 years is neither just nor equitable nor legal. This would cause great hardship to the respondent No.3 inasmuch as he will have to vacate the land and demolish his construction unless he remains successful bidder in the future auction.

25. On the facts and circumstances of the case and for the reasons stated above I do not find any illegality in the Notification Exh.B. Consequently it cannot be quashed and set aside. As stated earlier no mandamus can be issued as prayed for in the writ petition. If Notification Exh.B cannot be quashed then further relief in the nature of mandamus contained in Para : 19(B) of the writ petition also cannot be granted.

26. In the result I do not find any merit in this petition which is liable to be dismissed. The writ petition is accordingly dismissed with no order as to costs.

sd/-

Date : December 11, 2000 (D. C. Srivastava, J.)

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